

AMENDED IN ASSEMBLY JULY 24, 2003
AMENDED IN ASSEMBLY JUNE 26, 2003
AMENDED IN SENATE MAY 22, 2003
AMENDED IN SENATE APRIL 21, 2003
AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 543

Introduced by Senator Machado

February 20, 2003

An act to add Chapter 1.5 (commencing with Section 1249) to Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Machado. Water rights: groundwater cleanup operations.

Existing law authorizes the State Water Resources Control Board to grant permits and licenses to appropriate water in accordance with certain procedures. Existing law authorizes various public agencies to order a person who has contaminated water to clean up the water or to take other remedial action.

This bill *would permit the water produced from a groundwater cleanup operation to be used, transferred, assigned, or conveyed for beneficial use by the operator of that operation only if a written agreement for the allocation of treated water has been entered into between the operator and every injured public water system that has given notice to the operator of its claim that it is an injured public water system, as defined, or other requirements are met. The bill would*

provide that no right shall vest in the operator solely by virtue of its extraction, treatment, and discharge of water from that operation, with certain exceptions, would prohibit the water produced from a groundwater cleanup operation from being used by the operator of a groundwater cleanup operation, or from being transferred, assigned, or conveyed to a third party for use, until a replacement water supply has been provided to every public water system injured by the contamination. The bill would provide that no right shall vest in the operator of a groundwater cleanup operation solely by virtue of its extraction, treatment, and discharge of water from that operation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 1249) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 1.5. GROUNDWATER SUBJECT TO A CLEANUP
OPERATION

~~1249. Except where an agreement has been entered into~~
1249. The water produced from a groundwater cleanup operation may only be used by the operator of the groundwater cleanup operation, or transferred, assigned, or conveyed by that operator, for beneficial use if one of the following applies:

(a) A written agreement for the allocation of treated water has been entered into between the operator and every injured public water system that has given notice to the operator of its claim that it is an injured public water system.

(b) The operator has provided notice of its readiness to transfer, assign, or convey available treated water as replacement water to injured public water systems who elect to participate within 90 days of receiving notice. For the purposes of this subdivision, that notice shall include a statement that the operator is ready to transfer, assign, or convey that water on a prorated basis if the quantity of that water is insufficient to meet all demands for treated water.

(c) The operator has transferred, assigned, or conveyed the treated water to a court appointed watermaster, a county water

1 agency, or a groundwater management agency established by
2 general law or a joint powers authority that has, prior to January
3 1, 2004, adopted a basinwide management plan or other
4 integrated regional water management program or plan in
5 accordance with Section 10753 or paragraph (1) or (2) of
6 subdivision (c) of Section 10540, in a manner that meets both of
7 the following requirements:

8 (1) The treated water is dedicated for recovery and use by all
9 injured public water systems.

10 (2) The treated water is made available to each injured public
11 water system and, if necessary, prorated among them, as a
12 replacement water supply.

13 (d) A replacement water supply, which may include the treated
14 water or remediation of the contaminated drinking water supply,
15 or full financial compensation instead of a replacement water
16 supply, has been provided to all injured public water systems, or
17 a written agreement has been executed to provide a replacement
18 water supply, or full financial compensation instead of a
19 replacement water supply, to all injured public water systems, in
20 an amount that is sufficient to satisfy all demands for replacement
21 water supplies.

22 1249.1. The benefits of Section 1010 shall apply to the use of
23 treated water or water from any source that is used as a
24 replacement water supply by any injured public water system.

25 1249.2. Notwithstanding any other provision of law, no right
26 shall vest in the operator of a groundwater cleanup operation
27 solely by virtue of its extraction, treatment, and discharge of water
28 from the groundwater cleanup operation.

29 1249.3. (a) The definitions set forth in this section govern the
30 construction of this chapter.

31 (b) “Groundwater cleanup operation” means any operation or
32 program designed or implemented to remediate or abate
33 groundwater contamination pursuant to an approved work plan or
34 order issued by a federal agency or a state agency, including a
35 regional board, for the cleanup or remediation of contaminated
36 groundwater.

37 (c) (1) Subject to paragraph (2), “operator” means any
38 person or entity engaged in a groundwater cleanup operation or
39 agent of that person or entity designated by that operator for that
40 purpose.

1 (2) “Operator” only means a person or public entity that has
2 been determined by a state agency, federal agency, or a court of
3 competent jurisdiction to be responsible or potentially responsible
4 for all or part of the groundwater contamination, but does not
5 include a public water system for which any of the following
6 applies:

7 (A) Has been identified by a state agency, federal agency, or a
8 court of competent jurisdiction as a responsible or potentially
9 responsible party as a result of its ownership or operation of a well
10 or its production of groundwater for distribution to its customers.

11 (B) Is using the treated water it produces for the benefit of
12 serving its customers.

13 (C) Is designated by a state agency or federal agency to
14 administer the cleanup operation or facilities.

15 (D) Is the only injured public water system beneficially using
16 the treated water it produces for the sole benefit of its customers.

17 (d) “Prorated” means the allocation of treated water among
18 participating demands according to the percentage of demand
19 each injured public water system holds in relation to total demands
20 for treated water.

21 (e) “Injured public water system” means a public water system
22 as defined in subdivision (h) of Section 116275 of the Health and
23 Safety Code that produces groundwater from that portion of the
24 groundwater basin that is the subject of the remediation by the
25 operator of a groundwater cleanup operation.

26 (f) “Replacement water supply” means a water supply
27 delivered as a substitute for the contaminated groundwater supply
28 that meets all of the following requirements:

29 (1) Has the same reliability as the water pumped by the public
30 water system on a 24-hour average.

31 (2) Equals the volume of water pumped by the public water
32 system on a 24-hour average, including that amount of water
33 required for “peaking,” fire flow pipeline distribution capacity,
34 and any stored surplus supplies.

35 (3) Has the same or comparable water pressure that existed
36 prior to the contamination of the groundwater supply.

37 (4) Has the same, comparable, or better water quality than that
38 pumped by the public water system prior to the contamination of
39 the groundwater supply.

1 (5) *The cost of the water is the same or comparable to that of*
2 *the water pumped by the public water system prior to the*
3 *contamination of the groundwater supply.*

4 (g) *“Work plan” means a schedule of actions to cleanup or*
5 *remediate contaminated groundwater, which has been approved*
6 *by a state agency or federal agency, for the purposes of the cleanup*
7 *and remediation of contaminated groundwater.*

8 (h) *“Notice” means notice undertaken by certified mail to the*
9 *official business address of each public water system, return*
10 *receipt requested.*

11 (i) *“Demands for treated water” means the total amount of*
12 *water that is not available to all injured public water systems as*
13 *calculated by the operator annually commencing on the date of the*
14 *first notice of the availability of treated water due to either of the*
15 *following:*

16 (1) *The injured public water system has determined on the basis*
17 *of sampling undertaken pursuant to Chapter 15 (commencing with*
18 *section 66265.1) of Division 4 of Title 22 of the California Code*
19 *of Regulations that the water does not meet primary or secondary*
20 *drinking water standards or state recommended action levels for*
21 *public drinking water and cannot be treated to meet those*
22 *requirements using chlorination.*

23 (2) *The use of a groundwater supply could cause a migration*
24 *or dispersal of the contamination.*

25 (j) *“Demands for replacement water supplies” means the total*
26 *amount of replacement water supply injured public water systems*
27 *are authorized to receive pursuant to an order of, or determination*
28 *by, a state agency, federal agency, or court of competent*
29 *jurisdiction.*

30 (k) *“Participating demands” means the total annual demands*
31 *for treated water of all injured public water systems that elect to*
32 *participate in the transfer, assignment, or conveyance of water*
33 *within 90 days of receiving notice.*

34 (l) *“Treated water” means the water produced by the*
35 *groundwater cleanup operation.*

36 (m) *“Comparable quality” means that one of the following*
37 *applies to the water:*

38 (1) *The water meets primary and secondary drinking water*
39 *standards, and state recommended action levels for public*

1 *drinking water, or can be treated to meet those standards and levels*
2 *using chlorination.*

3 (2) *The water meets any other applicable standard that the*
4 *State Department of Health Services prescribes in a permit for a*
5 *public water system.*

6 (3) *The water is determined to be of comparable quality by the*
7 *Public Utilities Commission.*

8 1249.4. *This chapter does not limit the rights of any person or*
9 *entity, including the operator, to beneficially use groundwater that*
10 *is produced from facilities other than those used in the*
11 *groundwater cleanup operation.*

12 1249.5. (a) *This chapter does not apply to the discharge of*
13 *any waste stream as influent or effluent.*

14 (b) *This chapter does not prohibit the recharge, discharge, or*
15 *injection of remediated groundwater into the aquifer or surface*
16 *water according to the requirements of any work plan if the*
17 *operator does not beneficially use, convey, transfer, or assign the*
18 *treated water after it is recharged, discharged, or injected into the*
19 *aquifer.*

20 (c) *This chapter does not prohibit the operation of wellhead*
21 *treatment systems or other groundwater cleanup operations*
22 *dedicated to remediating water pumped from a public water*
23 *system's well or wells, if both of the following apply:*

24 (1) *The operator does not beneficially use, convey, transfer, or*
25 *assign the treated water and provides the treated water to that*
26 *public water system.*

27 (2) *The operator has offered the same or comparable wellhead*
28 *treatment systems or other groundwater cleanup operations to all*
29 *other injured public water systems.*

30 1249.6. *The allocation of treated water pursuant to this*
31 *chapter does not affect or limit the rights or remedies that are*
32 *available under any other law to an injured public water system.*

33 1249.7. *This chapter does not establish, determine, or*
34 *abrogate a standard for source water, receiving waters, or other*
35 *state water quality standards of any kind.*

36 1249.8. *This chapter does not alter or modify any order or*
37 *requirement of any federal official or state official or agency*
38 *acting as a natural resource trustee, under applicable federal or*
39 *state law, as it relates to the use of replacement water when used*



1 to restore damage to natural resources or to mitigate damage to
2 natural resources.

3 1249.9. This chapter does not expand the powers of a court
4 appointed watermaster, a county water agency, a regional
5 groundwater management agency, or a joint powers agency.

6 1249.10. All calculations performed by an operator under
7 this chapter shall be subject to review by a court of competent
8 jurisdiction upon challenge by any injured public water system.

9 ~~between the operator of a groundwater cleanup operation and all~~
10 ~~injured public water systems, or as otherwise expressly provided~~
11 ~~in a consent decree or other judicial order, the water produced from~~
12 ~~a groundwater cleanup operation may not be used by the operator~~
13 ~~of a groundwater cleanup operation, or transferred, assigned, or~~
14 ~~conveyed by that operator to a third party for use, until a~~
15 ~~replacement water supply has been provided to every public water~~
16 ~~system injured by the contamination.~~

17 1249.2. ~~Notwithstanding any other provision of law, no right~~
18 ~~shall vest in the operator of a groundwater cleanup operation solely~~
19 ~~by virtue of its extraction, treatment, and discharge of water from~~
20 ~~that operation.~~

21 1249.3. (a) ~~The definitions set forth in this section govern the~~
22 ~~construction of this chapter.~~

23 (b) ~~“Groundwater cleanup operation” means any operation or~~
24 ~~program designed or implemented to remediate or abate~~
25 ~~groundwater contamination pursuant to an approved work plan or~~
26 ~~order issued by a federal agency or a state agency, including a~~
27 ~~regional board, for the cleanup or remediation of contaminated~~
28 ~~groundwater.~~

29 (c) ~~“Injury” or “injured” means harm caused by any of the~~
30 ~~following:~~

31 (1) ~~Contamination of a public water system’s supply source.~~

32 (2) ~~The inability of a public water system to use a groundwater~~
33 ~~supply source because it is threatened by contamination.~~

34 (3) ~~The inability of a public water system to use a groundwater~~
35 ~~supply source because its use could cause a migration or dispersal~~
36 ~~of the contamination.~~

37 (d) (1) ~~“Operator” means any person or entity engaged in a~~
38 ~~groundwater cleanup operation or agent of that person or entity~~
39 ~~designated by that operator for that purpose if the person or entity~~
40 ~~has been identified by a state or federal agency, or a court of~~

1 competent jurisdiction, as responsible or potentially responsible
2 for all or part of the groundwater contamination.

3 (2) Notwithstanding paragraph (1), “operator” does not
4 include a public water system that has been identified by a state or
5 federal agency, or a court of competent jurisdiction, as responsible
6 or potentially responsible for all or part of the groundwater
7 contamination as a result of its ownership or operation of a well or
8 its production of groundwater for distribution to its customers.

9 (e) “Public water system” has the same meaning as that set
10 forth in subdivision (h) of Section 116275 of the Health and Safety
11 Code.

12 (f) “Replacement water supply” means a water supply
13 delivered to the public water system to be substituted for the
14 contaminated groundwater supply that meets both of the following
15 requirements:

16 (1) The delivery of the replacement water supply does not
17 impose additional costs upon the public water system.

18 (2) The replacement water supply is of comparable quantity,
19 quality, and reliability to that existing prior to the contamination
20 of the groundwater supply, including water that is required for
21 “peaking” and fire flow pipeline distribution capacity.

22 (g) “Work plan” means a schedule of actions to clean up or
23 remediate contaminated groundwater, that is approved by a state
24 or federal agency for the purposes of the cleanup and remediation.

25 1249.4. This chapter does not affect rights of any person or
26 entity, including the operator, to beneficially use groundwater that
27 is produced from facilities other than those used in the
28 groundwater cleanup operation.